

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NANCY MCCARTHY
312 Oak Valley Drive
Vacaville, California 95687

Registered Nurse License No. 392356

Respondent.

Case No. 2007-36

OAH No.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 16, 2008.

It is so ORDERED October 16, 2008.

LaTranene W Tate

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR., Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy Attorney General
JUSTIN R. SURBER, State Bar No. 226937
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 355-5437
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Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2007-36

NANCY MCCARTHY
312 Oak Valley Drive
Vacaville, California 95687

OAH No.

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Registered Nurse License No. 392356

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of the Board of Registered Nursing. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Justin R. Surber, Deputy Attorney General.

2. Nancy McCarthy (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about August 31, 1985, the Board of Registered Nursing issued Registered Nurse License No. 392356 to Nancy McCarthy (Respondent). The was in full force and effect at all times relevant to the charges brought in Accusation No. 2007-36 and will expire on October 31, 2008, unless renewed.

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JURISDICTION

4. Accusation No. 2007-36 was filed before the Board of Registered Nursing (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 17, 2006. Respondent timely filed her Notice of Defense contesting the Accusation. A First Amended Accusation was filed with Board and properly served on Respondent on May 16, 2008. A copy of the First Amended Accusation No. 2007-36 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2007-36. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2007-36, agrees that cause exists for discipline and hereby surrenders her Registered Nurse License No. 392356 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Registered Nurse License without further process.

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the (Board) may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 392356, issued to Respondent Nancy McCarthy is surrendered and accepted by the Board of Registered Nursing.

13. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

14. Respondent shall lose all rights and privileges as a Registered Nurse in California as of the effective date of the Board's Decision and Order.

15. Respondent shall cause to be delivered to the Board both her wall and pocket license certificate on or before the effective date of the Decision and Order.

1 16. Respondent understands and agrees that if she ever applies for licensure or
2 petitions for reinstatement in the State of California, the Board shall treat it as a new application
3 for licensure. Respondent must comply with all the laws, regulations and procedures for
4 licensure in effect at the time the application or petition is filed, and all of the charges and
5 allegations contained in Accusation No. 2007-36 shall be deemed to be true, correct and
6 admitted by Respondent when the Board determines whether to grant or deny the application or
7 petition.

8 17. Upon reinstatement of the license, Respondent shall pay to the Board costs
9 associated with its investigation and enforcement pursuant to Business and Professions Code
10 section 125.3 in the amount of Five Hundred Dollars and No Cents (\$500.00). Respondent shall
11 be permitted to pay these costs in a payment plan approved by the Board.

12 18. Should Respondent ever apply or reapply for a new license or certification,
13 or petition for reinstatement of a license, by any other health care licensing agency in the State of
14 California, all of the charges and allegations contained in Accusation, No. 2007-36 shall be
15 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
16 Issues or any other proceeding seeking to deny or restrict licensure.

17 19. Respondent shall not apply for licensure or petition for reinstatement for
18 two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

19 20. Respondent shall pay the Board its costs of investigation and enforcement
20 in the amount of \$500.00 prior to issuance of a new or reinstated license.

21 **ACCEPTANCE**

22 I have carefully read the Stipulated Surrender of License and Order. I understand
23 the stipulation and the effect it will have on my Registered Nurse License. I enter into this
24 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
25 be bound by the Decision and Order of the Board of Registered Nursing.

26 DATED: 29 JUL 08

27 *Nancy McCarthy*
28 Nancy McCarthy (Respondent)
 Respondent

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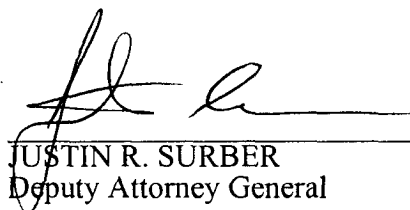
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 8/1/08

EDMUND G. BROWN JR., Attorney General
of the State of California

FRANK H. PACOE
Supervising Deputy Attorney General



JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SF2005401265
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Exhibit A

First Amended Accusation No. 2007-36

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER, State Bar No. 226937
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
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5 Telephone: (415) 355-5437
Facsimile: (415) 703-1234

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **NANCY MCCARTHY**
14 312 Oak Valley Drive
Vacaville, California 95687

15 Registered Nurse License No. 392356

16 Respondent.

Case No. 2007-36

OAH No.

**FIRST AMENDED
ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this First Amended
20 Accusation ("Accusation") solely in her official capacity as the Executive Officer of the Board of
21 Registered Nursing, Department of Consumer Affairs.

22 2. On or about August 31, 1985, the Board of Registered Nursing issued
23 Registered Nurse License Number 392356 to Nancy McCarthy (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2008, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. **Section 2750** of the Code provides, in pertinent part, that the Board may
3 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
4 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5 5. **Section 2764** of the Code provides, in pertinent part, that the expiration of
6 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
7 against the licensee or to render a decision imposing discipline on the license. Under section
8 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
9 the expiration.

10 **STATUTORY PROVISIONS**

11 6. **Section 490** of the Code states:

12 "A board may suspend or revoke a license on the ground that the licensee has
13 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
14 duties of the business or profession for which the license was issued. A conviction within the
15 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
16 contendere. . ."

17 7. **Section 2761** of the Code states, in pertinent part:

18 "The board may take disciplinary action against a certified or licensed nurse or
19 deny an application for a certificate or license for any of the following:

20 "(a) Unprofessional conduct . . .

21 . . .

22 (f) Conviction of a felony or of any offense substantially related to the
23 qualifications, functions, and duties of a registered nurse, in which event the record of the
24 conviction shall be conclusive evidence thereof."

25 . . .

26 8. **Section 2762** of the Code states, in pertinent part:

27 "In addition to other acts constituting unprofessional conduct within the meaning
28 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed

under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.”

9. **Section 4060** of the Code states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1., or naturopathic doctor pursuant to Section 3640.5.

10. **California Code of Regulations, title 16, section 1444, states:**

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(c) Theft, dishonesty, fraud, or deceit.”

COSTS

11. **Section 125.3** of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 Respondent, Complainant further alleges that on or about March 3, 1999, in a prior disciplinary
2 action entitled *In the Matter of the Petition to Revoke Probation Against Nancy McCarthy* before
3 the Board of Registered Nursing, in Case Number 94-215, Respondent's probation was revoked
4 for Respondent's failure to fully comply with the terms and conditions of probation. The
5 revocation was stayed and Respondent's license was placed on probation for two years. That
6 decision is now final and is incorporated by reference as if fully set forth.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 392356, issued
11 to Nancy McCarthy.
- 12 2. Ordering Nancy McCarthy to pay the Board of Registered Nursing the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;
- 15 3. Taking such other and further action as is deemed necessary and proper.

16
17 DATED: 5/12/08

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19 
20 RUTH ANN TERRY, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

26 SF2005401265

27 40243612.wpd

ORIGINAL

DANIEL E. LUNGREN, Attorney General
of the State of California
JOEL S. PRIMES, State Bar No. 42568
Supervising Deputy Attorney General
MAUREEN McKENNAN STRUMPFER, State Bar No. 161571
Deputy Attorney General
1300 I Street, Suite 125
P. O. Box 944255
Sacramento, California 94244-2550
Telephone: (916) 445-2069
Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to)
Revoke Probation Against:)

Agency No. 94-215

NANCY TARBOX MCCARTHY)
312 Oak Valley Drive)
Vacaville, California 95687)

STIPULATION, DECISION,
AND ORDER

Registered Nurse License)
Number 392356)

Respondent)

Respondent NANCY TARBOX MCCARTHY (hereinafter

"respondent"), and complainant, Ruth Ann Terry, R.N., Executive
Officer, Board of Registered Nursing, Department of Consumer
Affairs, State of California, through her counsel, Deputy
Attorney General Maureen McKennan Strumpfer, hereby stipulate
that the following matters are true:

1. On August 31, 1985, the Board of Registered
Nursing issued Registered Nursing License Number 392356 to Nancy
Tarbox McCarthy (respondent). On October 31, 1998, the license
will expire, unless renewed.

/ / /

1 2. On January 19, 1995, the Board of Registered
2 Nursing revoked respondent's license. The revocation was stayed
3 and respondent was placed on probation for three (3) years, with
4 terms and conditions in proceeding number 94-215. Three
5 conditions of probation are: 1) Condition B of the probation
6 order required respondent to fully comply with the terms and
7 conditions of the Probation Program established by the Board; 2)
8 Condition F of the probation order required her to engage in the
9 practice of professional nursing in California for a minimum of
10 24 hours per week (or as determined by the Board) for six
11 consecutive months; and 3) Condition J of the probation order
12 required respondent to successfully complete a course as directed
13 by the Board prior to engaging in the practice of nursing and
14 prior to the end of the probationary term.

15 3. On or about January 15, 1998, Respondent was duly
16 served with the Petition to Revoke Probation, which is on file
17 and pending in Case No. 94-215, and accompanying documents. The
18 Petition to Revoke alleged cause for disciplinary action against
19 respondent based on her failure to fully comply with her
20 probationary terms. Said Petition is attached hereto as an
21 Exhibit and incorporated by reference as though fully set forth
22 herein. Respondent is subject to the jurisdiction of the Board
23 in regard to the matters alleged in the Petition.

24 4. Respondent has read and understands the charges
25 and allegations of violations contained in the Petition to Revoke
26 and is fully aware of her rights under the Administrative
27 Procedure Act.

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1 c. Respondent failed to fully comply with the terms
2 and conditions of the Probation Program established by the Board,
3 as set forth in subparagraphs a and b of the Petition (Condition
4 B) .

5 8. The foregoing admissions are made only for the
6 purpose of this proceeding and any subsequent proceedings between
7 respondent and the Board, the State of California and any of its
8 agencies, and any other government agency responsible for
9 licensing registered nurses. In the event this Stipulation is
10 not adopted by the Board, the admissions made herein shall be
11 null and void, and may not be used by the parties for any
12 purpose.

13 9. It is understood by respondent that, in deciding
14 whether to adopt this stipulation, the Board may receive oral and
15 written communications from its staff and the Attorney General's
16 Office. Communications pursuant to this paragraph shall not
17 disqualify the Board or other persons from future participation
18 in this or any other matter affecting respondent. In the event
19 this stipulation is not adopted by the Board, the stipulation
20 will not become effective and may not be used for any purpose,
21 except for this paragraph, which shall remain in effect.

22 WHEREFORE, it is stipulated that the Board of
23 Registered Nursing may issue the following Decision and Order:

24 **DECISION AND ORDER**

25 1. Registered Nursing License number 392356 issued to
26 NANCY TARBOX MCCARTHY is hereby revoked.^{1/} However, the order of
27

28 1. Respondent's probation is revoked and the order of
revocation is imposed in that respondent failed to fully comply
with the terms and conditions of probation. Respondent's

1 revocation is stayed and respondent is placed on probation for
2 two (2) years under the following terms and conditions:

3 A. OBEY ALL LAWS

4 Respondent shall obey all federal, state and local
5 laws, and all rules and regulations of the Board of Registered
6 Nursing governing the practice of nursing in California. A full
7 and detailed account of any and all violations of law shall be
8 reported by respondent to the Board in writing within seventy-two
9 (72) hours of occurrence. To permit monitoring of compliance
10 with this term, respondent shall submit completed fingerprint
11 cards and fingerprint fees within forty-five (45) days of the
12 effective date of the decision, unless previously submitted as
13 part of the licensure application process.

14 B. COMPLY WITH PROBATION PROGRAM

15 Respondent shall fully comply with the terms and
16 conditions of the Probation Program established by the Board and
17 shall cooperate with representatives of the Board in its
18 monitoring and investigation of respondent's compliance with the
19 Program. Respondent shall inform the Board in writing within no
20 more than fifteen (15) days of any address change and shall at
21 all times maintain an active, current license status with the
22 Board, including during any period of suspension.

23 C. REPORT IN PERSON

24 Respondent, during the period of probation, shall
25 appear in person at interviews/meetings as directed by the Board
26 or its designated representatives.

27
28 probation will be extended an additional two (2) years, under the
same terms and conditions, in order that she fully complete her
probationary conditions.

1 D. ABSENCE FROM STATE

2 Periods of residency or practice outside of California
3 will not apply to the reduction of this probationary term. The
4 respondent must provide written notice to the Board, at its
5 Sacramento address, within 15 days of any change of residency or
6 practice outside California.

7 E. SUBMIT WRITTEN REPORTS

8 Respondent, during the period of probation, shall
9 submit such written reports/declarations and verification of
10 actions under penalty of perjury as are required. These
11 declarations shall contain statements relative to respondent's
12 compliance with all the terms and conditions of the Board's
13 Probation Program. Respondent shall immediately execute all
14 release of information forms as may be required by the Board or
15 its representatives.

16 F. FUNCTION AS A REGISTERED NURSE

17 Respondent, during the period of probation, shall
18 engage in the practice of professional nursing in California for
19 a minimum of twenty-four (24) hours per week (or as determined by
20 the Board) for six (6) consecutive months. Pursuant to Section
21 2732 of the Business and Professions Code, no person shall engage
22 in the practice of registered nursing without holding a license
23 which is in an active status.

24 G. NURSING PRACTICE

25 The Board shall be informed of and approve of each
26 agency in California for which the respondent provides nursing
27 services prior to respondent's commencement of work. The
28 respondent shall inform her employer of the reason for and the

1 terms and conditions of probation and shall provide a copy of the
2 Board's Decision and Order to her employer and immediate
3 supervisor. The employer shall submit performance evaluations
4 and other reports as requested by the Board. Respondent is also
5 required to notify the Board in writing within seventy-two (72)
6 hours after termination of any nursing employment. Any
7 notification of termination shall contain a full explanation of
8 the circumstances surrounding it.

9 H. SUPERVISION

10 The Board shall be informed of and approve of the level
11 of supervision provided to the respondent while she is
12 functioning as a registered nurse in California. The appropriate
13 level of supervision must be approved by the Board prior to
14 commencement of work. Respondent shall practice only under the
15 direct supervision of a registered nurse in good standing (no
16 current discipline) with the Board of Registered Nursing.

17 I. EMPLOYMENT LIMITATIONS

18 Respondent may not work in California for a nurse
19 registry, a temporary nurse agency, a home care agency, an in-
20 house nursing pool, as a nursing supervisor, as a faculty member
21 in an approved school of nursing, or as an instructor in a Board
22 approved continuing education program. Respondent must work only
23 on regularly assigned, identified and predetermined worksites
24 with appropriate supervision as approved by the Board.

25 J. COMPLETE A NURSING COURSE OR COURSES

26 Respondent, at her expense, shall begin and
27 successfully complete course(s) in nursing as directed by the
28 Board prior to engaging in the practice of nursing in California

1 and prior to the end of the probationary term.

2 The respondent may be suspended from practicing nursing
3 until the necessary coursework is successfully completed. The
4 content of such course(s) and the place and conditions of
5 instruction shall be specified by Board representatives at the
6 time of the initial probation meeting based on the nature of the
7 violation(s). Specific courses must be approved prior to
8 enrollment. The respondent must submit written proof of
9 enrollment and proof of successful completion. Transcripts or
10 certificates of completion must be mailed directly to the Board
11 by the agency or entity instructing respondent.

12 Home study or correspondence courses are not acceptable
13 and will not be approved.

14 K. PHYSICAL EXAMINATION

15 Respondent, at her expense, within forty-five (45) days
16 of the effective date of this decision, shall have a licensed
17 physician submit, in a format acceptable to the Board, an
18 assessment of the respondent's physical condition and capability
19 to perform the duties of a professional registered nurse. If
20 medically determined, a recommended treatment program will be
21 instituted and followed by the respondent with the physician
22 providing written reports to the Board on forms provided by the
23 Board.

24 L. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING)
25 DRUGS

26 Respondent shall completely abstain from the
27 possession, injection or consumption by any route of all
28 psychotropic (mood-altering) drugs, including alcohol, except
when the same are lawfully prescribed by a licensed physician or

1 dentist as part of documented medical treatment. Respondent
2 shall have sent to the Board, in writing and within fourteen (14)
3 days, by the prescribing physician or dentist, a report
4 identifying the medication, dosage, the date the medication was
5 prescribed, the respondent's prognosis, and the date the
6 medication will no longer be required.

7 M. SUBMIT TO TESTS AND SAMPLES

8 Respondent, at her expense, shall participate in a
9 random, biological fluid testing or a drug screening program
10 which the Board approves. The length of time and frequency will
11 be subject to approval by the Board. The respondent is
12 responsible for keeping the Board informed of respondent's
13 current telephone number at all times and for ensuring that
14 reports are submitted directly by the testing agency to the
15 Board, as directed. Any confirmed positive finding shall be
16 reported immediately to the Board by the program and the
17 respondent will be considered in violation of probation.

18 In addition, respondent, at any time during her period
19 of probation shall fully cooperate with the Board or any of its
20 representatives, and shall, when requested, submit to such tests
21 and samples as the Board or its representatives may require for
22 the detection of alcohol, narcotics, hypnotics, dangerous drugs,
23 or other controlled substances.

24 N. VIOLATION OF PROBATION

25 If respondent violates the conditions of her probation,
26 the Board, after giving respondent notice and an opportunity to
27 be heard, may set aside the stay order and impose the discipline
28 (revocation) of respondent's license.


1 If during the period of probation, an accusation or
2 petition to revoke probation has been filed against respondent's
3 license or the Attorney General's Office has been requested to
4 prepare an accusation or petition to revoke probation against the
5 respondent's license, the probationary period shall automatically
6 be extended and shall not expire until the accusation or petition
7 has been acted upon by the Board.

8 Upon successful completion of probation, the
9 respondent's license will be fully restored.

10 IT IS FURTHER STIPULATED AND AGREED that the terms of
11 this Stipulation shall be subject to the acceptance of the Board
12 of Registered Nursing. If the Board fails to accept this
13 Stipulation, it shall be of no force or effect for either party,
14 and the matter will be regularly set for hearing.

15 DATED: June 4, 1998

DANIEL E. LUNGREN
Attorney General
JOEL S. PRIMES, Supervising
Deputy Attorney General

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20 MAUREEN MCKENNAN STRUMPFER
21 Deputy Attorney General
22 Attorneys for Complainant
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1 I hereby state that I have read and understand the
2 legal significance and consequences of this Stipulation, and I
3 fully understand all of, and agree to be bound by, the terms of
4 this document. I understand that I have certain rights under the
5 California Administrative Procedure Act and the laws and
6 regulations of the State of California in regard to this matter,
7 and I knowingly and intelligently waive those rights.

8 I understand my right to retain legal counsel to advise
9 me in this matter. To the extent that I have not exercised that
10 right, I have done so knowingly and voluntarily.

11 I further understand that this Stipulation may not be
12 accepted by the California Board of Registered Nursing, in which
13 case it is of no effect.

14 I agree that a signed facsimile (FAX) of this document
15 shall be as binding as an original signed copy.

16
17 DATED: May 29, 1998

Nancy Tarbox McCarthy
NANCY TARBOX MCCARTHY
Respondent
Registered Nurse License No. 392356

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ORDER

The above Stipulation has been adopted and shall become
the Decision of the Board of Registered Nursing of the State of
California effective March 3 , 1999 .

IT IS SO ORDERED this 1st day of February ,
1999 .

BOARD OF REGISTERED NURSING
Department of Consumer Affairs
State of California

By Mary Jo Murren

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JOEL S. PRIMES, State Bar No. 42568
Supervising Deputy Attorney General
3 MAUREEN MCKENNAN STRUMPFER, State Bar No. 161571
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5 Sacramento, California 94244-2550
Telephone: (916) 445-2069

6 Attorneys for Petitioner
7

8 BEFORE THE
9 BOARD OF REGISTERED NURSING
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Petition Against:)

NO. 94-215

12 NANCY TARBOX MCCARTHY)

312 Oak Valley Drive)

13 Vacaville, California 95687)

14 Registered Nurse License No. 392356)

PETITION
TO REVOKE
PROBATION

15 Respondent.)
16

17 Ruth Ann Terry, M.P.H., R.N., alleges:
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19 1. Petitioner Ruth Ann Terry, M.P.H., R.N., makes and
20 files this petition to revoke probation in her official capacity
21 as Executive Officer, Board of Registered Nursing, Department of
22 Consumer Affairs.
23

24 2. On August 31, 1985, the Board of Registered Nursing
25 issued Registered Nurse License Number 392356 to Nancy Tarbox
26 McCarthy. On October 31, 1998, the license will expire, unless
27 renewed.

On January 19, 1995, the Board of Registered Nursing revoked respondent's license. The revocation was stayed and respondent was placed on probation for three years, with terms and conditions in proceeding number 94-215. Three conditions of probation are: 1) Condition B of the probation order required her to fully comply with the terms and conditions of the Probation Program established by the Board; 2) Condition F of the probation order required her to engage in the practice of professional nursing in California for a minimum of 24 hours per week (or as determined by the Board) for six consecutive months; 3) Condition J of the probation order required her to successfully complete a course as directed by the Board prior to engaging in the practice of nursing and prior to the end of the probationary term.

3. Grounds exist to revoke probation and reimpose the order of revocation in that respondent did not comply with terms and condition of probation as follows:

a. She failed to obtain a registered nurse position for a minimum of twenty-four hours per week for six consecutive months (Condition F).

b. She failed to begin and successfully complete a Chemical Dependency course, as directed by the Board (Condition J).

c. She failed to fully comply with the terms and conditions of the Probation Program established by the Board, as set forth in subparagraphs a and b of the petition (Condition B).

1 WHEREFORE, petitioner prays that a hearing be held and
2 that the Board of Registered Nursing make its order:

3 1. Revoking probation and reimposing the order
4 of revocation of Registered Nurse License Number 392356, issued
5 to Nancy Tarbox McCarthy.

6 2. Taking such other and further action as may be
7 deemed proper and appropriate.

8 DATED: 12/29/97

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11 Susan Blank for
12 RUTH ANN TERRY, M.P.H., R.N.
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California

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Petitioner

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1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DENISE EATON-MAY
Deputy Attorney General
3 455 Golden Gate Avenue, Suite 6200
San Francisco, CA 94102-3658
4 Telephone: (415) 703-2466

5 Attorneys for Complainant

6
7 BEFORE THE
BOARD OF REGISTERED NURSING
8 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
9

10 In the Matter of the Accusation)	No.: 94-215
Against:)	
11)	STIPULATION,
12 NANCY TARBOX MCCARTHY)	<u>DECISION AND ORDER</u>
312 Oak Valley Drive)	
13 Vacaville, California 95687)	
License No. 392356)	
14)	
Respondent.)	
15)	

16 IT IS HEREBY STIPULATED by the parties to the above
17 entitled matter that the following is true:

18 1. On August 31, 1985, the Board of Registered Nursing
19 issued Registered Nurse License No. 392356 to Nancy Tarbox
20 McCarthy. Said license was in full force and effect at all times
21 pertinent herein and will expire on October 31, 1994.

22 2. On or about May 9, 1992, an accusation bearing
23 number 94-215 was filed by Ruth Ann Terry, R.N. M.P.H., Executive
24 Officer of the Board of Registered Nursing, Department of
25 Consumer Affairs, of the State of California. Said accusation
26 alleged causes for disciplinary action against respondent, and
27 said accusation is incorporated herein by reference as though

1 fully set forth at this point. Said respondent was duly and
2 properly served with accusation number 94-215 by certified and
3 regular mail on May 23, 1994. Respondent filed a notice of
4 defense requesting a hearing on the charges contained in the
5 accusation on or about May 26, 1994.

6 3. Respondent has read the charges and allegations of
7 violations of the California Business and Professions Code
8 alleged in accusation number 94-215 and is fully aware of her
9 rights under the Administrative Procedure Act of the State of
10 California, including her right to a formal hearing and
11 opportunity to defend against the charges contained therein, and
12 her right to reconsideration and appeal of any adverse decision
13 that might be rendered following said hearing. Respondent
14 knowingly and intelligently waives her right to a hearing,
15 reconsideration, appeal, and any and all other rights which may
16 be accorded her pursuant to the Administrative Procedure Act
17 regarding the charges contained in accusation number 94-215.

18 4. For the purposes of settlement of this matter,
19 respondent hereby admits the following:

20 a. Respondent has violated Business and Professions
21 Code section 2761(a) on the grounds of unprofessional conduct as
22 defined in section 2762(a) of that code in that on October 28,
23 1992, while on duty in the Catheterization Laboratory Unit at
24 North Bay Medical Center, Fairfield, California, respondent
25 committed the following acts pertaining to morphine sulfate, a
26 controlled substance:

27 1) She obtained two - 10 mg. carpulets (syringes) of

1 morphine sulfate by fraud, misrepresentation or subterfuge in
2 violation of Health and Safety Code section 11173(a) from the
3 facility's supply without lawful authority therefor.

4 b. This Accusation does not allege any dereliction in
5 the performance of her nursing duties.

6 WHEREFORE, it is stipulated that the Board of
7 Registered Nursing may issue the following decision and order:

8 ORDER

9 1. Registered Nursing License number 392356 heretofore
10 issued to respondent Nancy Tarbox McCarthy is hereby revoked.
11 However, revocation of said license is stayed and respondent is
12 placed on probation for three (3) years upon the following terms
13 and conditions:

14 a. OBEY ALL LAWS - Respondent shall obey all federal,
15 state and local laws, and all rules, and regulations of the Board
16 of Registered Nursing governing the practice of nursing in
17 California. A full and detailed account of any and all
18 violations of law shall be reported by the respondent to the
19 Board in writing within seventy-two (72) hours of occurrence.

20 b. COMPLY WITH PROBATION PROGRAM - Respondent shall
21 fully comply with the terms and conditions of the Probation
22 Program established by the Board and cooperate with
23 representatives of the Board in its monitoring and investigation
24 of the respondent's compliance with the Program.

25 c. REPORT IN PERSON - Respondent, during the period of
26 probation, shall appear in person at interviews/meetings as
27 directed by the Board or its designated representatives.

1 d. ABSENCE FROM STATE - Periods of residency or
2 practice outside of California will not apply to the reduction of
3 this probationary term. The respondent must provide written
4 notice to the Board within 15 days of any change of residency or
5 practice outside the state.

6 e. SUBMIT WRITTEN REPORTS - Respondent, during the
7 period of probation, shall submit such written
8 reports/declarations and verification of actions under penalty of
9 perjury as are required. These declarations shall contain
10 statements relative to respondent's compliance with all the terms
11 and conditions of the Board's Probation Program. Respondent
12 shall immediately execute all release of information forms as may
13 be required by the Board or its representatives.

14 f. FUNCTION AS A REGISTERED NURSE - Respondent, during
15 the period of probation, shall engage in the practice of
16 professional nursing in California for a minimum of 24 hours per
17 week (or as determined by the Board) for 6 consecutive months.
18 Per Section 2732 of the Business and Professions Code, no person
19 shall engage in the practice of registered nursing without
20 holding a license which is in an active status.

21 g. NURSING PRACTICE - The Board shall be informed of
22 and approve of each agency for which the respondent provides
23 nursing services prior to respondent's commencement of work. The
24 respondent shall inform her employer of the reason for and the
25 terms and conditions of probation and shall provide a copy of the
26 Board's decision and order to her employer and immediate
27 supervisor. The employer shall submit performance evaluations

1 and other reports as requested by the Board. Respondent is also
2 required to notify the Board in writing within seventy-two (72)
3 hours after termination of any nursing employment. Any
4 notification of termination shall contain a full explanation of
5 the circumstances surrounding it.

6 h. SUPERVISION - The Board shall be informed of and
7 approve of the level of supervision provided to the respondent
8 while she is functioning as a registered nurse. The appropriate
9 level of supervision must be approved by the Board prior to
10 commencement of work. Respondent shall practice only under the
11 direct supervision of a registered nurse in good standing (no
12 current discipline) with the Board of Registered Nursing.

13 i. EMPLOYMENT LIMITATIONS - Respondent may not work
14 for a nurse registry; temporary nurse agency; home care agency;
15 in-house nursing pool; as a nursing supervisor; as a faculty
16 member in an approved school of nursing; or as an instructor in a
17 Board approved continuing education program. Respondent must
18 work only on regularly assigned, identified and predetermined
19 work site(s) with appropriate supervision as approved by the
20 Board.

21 j. COMPLETE A NURSING COURSE(S) - Respondent at
22 her expense shall begin and successfully complete a course(s) in
23 nursing as directed by the Board prior to engaging in the
24 practice of nursing and prior to the end of the probationary
25 term.

26 The respondent may be suspended from practicing nursing
27 until the necessary course work is completed. The content of

1 such course(s) and the place and conditions of instruction shall
2 be specified by Board representatives at the time of the initial
3 probation meeting based on the nature of the violation(s).
4 Specific courses must be approved prior to enrollment. The
5 respondent must submit written proof of enrollment and proof of
6 successful completion. Transcripts or certificates of completion
7 must be mailed directly to the Board by the agency or entity
8 instructing the respondent.

9 Home study or correspondence courses are not acceptable
10 and will not be approved.

11 k. PHYSICAL EXAMINATION - Respondent, at her expense,
12 within 45 days of the effective date of this decision, shall have
13 a licensed physician submit, in a format acceptable to the Board,
14 an assessment of the respondent's physical condition and
15 capability to perform the duties of a professional registered
16 nurse. If medically determined, a recommended treatment program
17 will be instituted and followed by the respondent with the
18 physician providing written reports to the Board on forms
19 provided by the Board.

20 L. ABSTAIN FROM USE OF DRUGS - Respondent shall
21 completely abstain from the possession, injection or consumption
22 by any route of all drugs, including alcohol, except when the
23 same are lawfully prescribed by a licensed physician or dentist
24 as part of documented medical treatment. Respondent shall have
25 sent to the Board, in writing and within fourteen (14) days, by
26 the prescribing physician or dentist, a report identifying the
27 medication, dosage, the date the medication was prescribed, the

1 respondent's prognosis, and the date the medication will no
2 longer be required.

3 m. SUBMIT TO TESTS AND SAMPLES - Respondent, at her
4 expense, shall participate in a random, biological fluid testing
5 or a drug screening program which the Board approves. The length
6 of time and frequency will be subject to approval by the Board.
7 The respondent is responsible for ensuring that reports are
8 submitted directly by the testing agency to the Board, as
9 directed. Any confirmed positive finding shall be reported
10 immediately to the Board by the program and the respondent will
11 be considered in violation of probation.

12 In addition, respondent, at any time during the period
13 of probation shall fully cooperate with the Board or any of its
14 representatives, and shall, when requested, submit to such tests
15 and samples as the Board or its representatives may require for
16 the detection of alcohol, narcotics, hypnotics, dangerous drugs,
17 or other controlled substances.

18 n. VIOLATION OF PROBATION - If respondent violates
19 probation in any respect, the Board, after giving respondent
20 notice and opportunity to be heard, may revoke probation and
21 carry out the disciplinary order which was stayed. If an
22 accusation or a petition to revoke probation is filed against
23 respondent during probation, the Board shall have continuing
24 jurisdiction until the matter is final, and the period of
25 probation shall be extended until the matter is final.

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1 o. COMPLETION OF PROBATION - Upon successful
2 completion of probation, respondent's license will be restored.

3 DATED: October 11, 1996

4 DANIEL E. LUNGREN, Attorney General
5 of the State of California
6 DENISE EATON-MAY
7 Deputy Attorney General

8 Denise Eaton-May -
9 DENISE EATON-MAY
10 Deputy Attorney General

11 Attorneys for Complainant

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1 I HAVE READ the stipulation, decision, and order. I
2 understand I have the right to a hearing on the charges contained
3 in the accusation, the right cross-examine witnesses, and the
4 right to introduce evidence in mitigation. I knowingly and
5 intelligently waive all of these rights, and understand that by
6 signing this stipulation, I am permitting the Board of Registered
7 Nursing to impose discipline against my license. I understand
8 the terms and ramifications of the stipulation, decision, and
9 order, and agree to be bound by its terms. I have discussed and
10 reviewed this stipulation, decision, and order with my attorney
11 whose signature appears below.

12 DATED: October 3, 1994

13 Nancy Tarbox McCarthy
14 NANCY TARBOX MCCARTHY, Respondent
15 Registered Nurse
16 License No. 392356

17 Richard Ross
18 RICHARD ROSS
19 Attorney for Respondent
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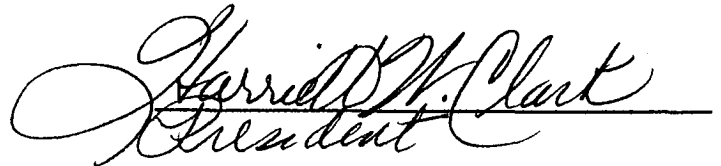
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DECISION AND ORDER

The foregoing is adopted as the Decision of the Board of Registered Nursing and shall become effective on the 19th day of January, 1995.

IT IS SO ORDERED this 19th day of December, 1994.

BOARD OF REGISTERED NURSING


President

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DENISE EATON-MAY, State Bar No. 116780
Deputy Attorney General
3 455 Golden Gate Avenue, Room 6200
San Francisco, California 94102
4 Telephone: (415) 703-2466

5 Attorneys for Complainant
6
7

8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)
Against:)

NO. 94-215

12 NANCY TARBOX MCCARTHY)
13 312 Oak Valley Drive)
14 Vacaville, California 95687)
License No. 392356)

ACCUSATION

15 Respondent.
16

17 Ruth Ann Terry, R.N., M.P.H., for causes for
18 discipline, alleges:
19

20 1. Complainant Ruth Ann Terry, R.N., M.P.H., makes
21 and files this accusation in her official capacity as Executive
22 Officer, Board of Registered Nursing, Department of Consumer
23 Affairs.
24

25 2. On August 31, 1985, the Board of Registered
26 Nursing issued Registered Nurse License Number 392356 to Nancy
27 Tarbox McCarthy. The license was in full force and effect at all

1 times pertinent herein and will expire on October 31, 1994,
2 unless renewed.

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4 3. Under Business and Professions Code section 2750,
5 the Board of Registered Nursing may discipline any licensee,
6 including a licensee holding a temporary or an inactive license,
7 for any reason provided in Article 3 of the Nursing Practice Act.

8 Under Business and Professions Code section 2764, the
9 expiration of a license shall not deprive the Board of Registered
10 Nursing of jurisdiction to proceed with a disciplinary proceeding
11 against the licensee or to render a decision imposing discipline
12 on the license.

13 Under Business and Professions Code section 125.3, the
14 Board of Registered Nursing may request the administrative law
15 judge to direct a licensee found to have committed a violation
16 or violations of the licensing act to pay a sum not to exceed the
17 reasonable costs of the investigation and enforcement of the
18 case.

19
20 4. DRUGS

21 "Morphine Sulfate" is a Schedule II controlled
22 substance as designated by Health and Safety Code section
23 11055(b)(1)(M).

24

25 NORTH BAY MEDICAL CENTER

26 5. Respondent has subjected her license to discipline
27 under Business and Professions Code section 2761(a) on the

1 grounds of unprofessional conduct as defined in section 2762(a)
2 of that code in that on October 28, 1992, while on duty in the
3 Catherization Laboratory Unit at North Bay Medical Center,
4 Fairfield, California, respondent committed the following acts
5 pertaining to morphine sulfate, a controlled substance:

6 a. She obtained two - 10 mg. carpjets (syringes) of
7 morphine sulfate by fraud, misrepresentation or subterfuge in
8 violation of Health and Safety Code section 11173(a) by stealing
9 the substance from the facility's supply without lawful authority
10 therefor.

11 b. She possessed morphine sulfate in violation of
12 Business and Professions Code section 4230 in that she had no
13 valid prescription therefor.

14
15 WHEREFORE, complainant prays that a hearing be held and
16 that the Board of Registered Nursing make its order:

17 1. Revoking or suspending Registered Nurse License
18 Number 392356, issued to Nancy Tarbox McCarthy.

19 2. Ordering Nancy Tarbox McCarthy to pay to the Board
20 of Registered Nursing its costs in investigating and enforcing
21 the case according to proof at the hearing pursuant to Business
22 and Professions Code section 125.3.

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1 3. Taking such other and further action as may be
2 deemed proper and appropriate.

3 DATED: May 9, 1994
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6 *Ruth Ann Terry for*
7 RUTH ANN TERRY, R.N., M.P.H.
8 Executive Officer
9 Board of Registered Nursing
10 Department of Consumer Affairs
11 State of California

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27 Complainant

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